

IN THE IS DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SUSIE WILLIAMS

Plaintiff

vs

VIVA HEALTH INC.
AND RICKY CRAPP

Defendant.

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CIVIL ACTION NO.2:07 CV-00321-
WKW-TFM

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June 2007, I electronically filed the foregoing Plaintiff, Susie Williams' Reply to Defendant, VIVA Health, Inc.'s Response to Plaintiff's Motion to Remand with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF Participants:

James S. Christie, Jr. Exq.
Amelia T. Driscoll, Esq
Bradley Arant Rose & White LLP
1819 Fifty Avenue North
Birmingham, Alabama 35203-2104

/s/ L. Cooper Rutland, Jr.
L. Cooper Rutland, Jr. (RUT010)
Rutland Law LLC
208 North Prairie Street
Post Office Box 551
Union Springs, Alabama 36089

IN THE IS DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|------------------|---|--------------------------------|
| SUSIE WILLIAMS |) | |
| |) | |
| Plaintiff |) | |
| |) | CIVIL ACTION NO.2:07 CV-00321- |
| vs |) | WKW-TFM |
| |) | |
| VIVA HEALTH INC. |) | |
| AND RICKY CRAPP |) | |
| |) | |
| Defendant. |) | |

PLAINTIFF SUSIE WILLIAMS' REPLY TO DEFENDANT
VIVA HEALTH, INC'S RESPONSE TO PLAINTIFF'S MOTION TO REMAND

Plaintiff, Susie Williams, hereby replies to Defendant, Viva Health, Inc's (Viva), response to Plaintiff's Motion to Remand and states that there is no Federal question subject matter jurisdiction and this Court is prohibited by statute from exercising supervision or control over this matter. Therefore, this Court should remand this cause to the State Court from which it was improperly removed.

1. This Court is prohibited from hearing this case.

Previously the Plaintiff pointed out to the Court that pursuant to 42 USC § 1395, "Nothing in this sub-chapter shall be construed to authorize any federal officer or employee to exercise any supervision and/or control over the administration or operation of any such institute, agency or person," (Exhibit D to Plaintiff's Brief in Support of Remand). Viva argues that they are an HMO and do not practice medicine or provide medical service. Plaintiff agrees. However, the statute includes institutions, agencies, or persons providing health services. According to Viva's web site at www.vivahealth.com/VivaaboutUSTriton.html, Defendant is a subsidiary of Triton Health

Systems which is owned by UAB Health Systems. Accordingly, Viva is part of an institution providing health services. §1395 prohibits the supervision or control over Viva's operation by federal employees of which this Court is most definitely employed.. As such the Court should remand this case to State Court where no such prohibition exists.

If, however the Court is not in agreement with this prohibition, Plaintiff contends the Defendant VIVA's three stated reasons that invoke federal question jurisdiction are not part of Plaintiff's properly pled state Court complaint. VIVA seeks to restate and provide self-serving characterization of Plaintiff's well pleaded complaint in an attempt to inject federal question jurisdiction where there is none.

II. No Federal Question

(1) Defendant failed to health screen plaintiff

VIVA attempts to re-characterize Plaintiff's claim of negligent procurement of insurance by restating the claim is a failure to health screen the Plaintiff, which is prohibited by 42CFR § 422.110 (Defendant's response Page 8).

Congress clearly intended that the prohibited practice of health screening or "Cherry Picking" was to avoid companies denying people the opportunity to enroll in health insurance programs who may not be as healthy as others. (See page 8 Defendant's Notice of Removal) The basis for not enrolling Plaintiff in VIVA's Medicare Plus program would not have been based on a factor related to health status, it would have been based on whether Plaintiff's insurance through Blue Cross/Blue Shield would better serve her needs rather than switching to VIVA. VIVA knew Plaintiff was a PEEHIP retiree that was presently being served by Blue Cross/Blue Shield. Armed with this knowledge, they could not have violated the mandates of the medicare marketing guideline for MA

plans because the practice of comparing existing coverage and the needs of the enrollee to proposed coverage could not reasonably be expected to have the effect of denying enrollment. **(Plaintiff was already enrolled.)** Alabama recognizes the tort of negligent procurement of insurance, see *Bush v Ford Life Insurance Company*, 682 So. 2nd 46 (Alabama 1996). Defendants were negligent in switching Plaintiff's insurance, plain and simple. There is no embedded issue of health screening. Defendants are trying desperately to convince this Court that there is when there clearly is not. No federal regulation is in conflict with the state law claims of negligent procurement thus no federal question jurisdiction exists.

(2) Adequate Marketing Materials

Defendant VIVA next tries to tether the fact that Mrs. Williams was misled and convinced that she would be better served by VIVA to VIVA's marketing materials. This is defendant's second attempt to create federal question jurisdiction where none exists. Plaintiff's complaint makes no claims whatsoever that Defendant's marketing materials were inadequate. Plaintiff was aware from the beginning VIVA had a limit of \$3,000.00 for prescription drugs (See Affidavit of Plaintiff Exhibit A) Plaintiff was advised by Ricky Crapp, the agent of Defendant VIVA that her PEEHIP would cover the rest. Plaintiff accordingly marked yes on her application that she would have additional insurance through PEEHIP (See Exhibit B) The defendants had full knowledge that they were in fact switching her coverage and she would not have additional prescription coverage. Mrs. Williams later learned from her Pharmacists that the \$3,000.00 was all she had. Plaintiff has no complaint with the actual materials that VIVA used. She does have a problem with the way VIVA and Ricky Crapp go about misleading and screwing up peoples insurance. Apparently, so does the Center for Medicare and Medicaid Services (CMS)(See Bulletin from Walter Bell, Alabama

Department of Insurance Exhibit C) CMS has notified the State's Insurance Department that they have received complaints about alleged misconduct regarding marketing practices. CMS advised the State of Alabama Department of Insurance that any complaints they received would be referred to the State's Insurance Department for prosecution. Defendant's will of course request leave to file a reply noting that this only concerns Part D and not Part C. VIVA was, however, nice enough to provide the Court with the answer (See Federal Register/Vol. 70 Page 4319 attachment C to Defendant's response) The middle column of the text "Part D and Part C incorporate the same preemption laws at §1856(b)(3) of the act". Since the same preemption laws apply to both Part D and Part C, then it stands to reason that CMS would treat issues involving marketing under Part C the same as they are in Part D. In fact CMS states " We believe that the power of Congress incorporated that same preemption standard into the Part D program and because congress required the preemption rules to apply consistently in Part C and Part D this same reasoning would apply to Part D." (70 Fed Reg 4319) As such, there are no federal question issues regarding marketing materials embedded in this case and remand is proper.

(3) Challenges to Medicare Coverage Decisions

Lastly, Defendants attempt to rewrite Plaintiff's claim that she was denied coverage. This is Defendant's last attempt to re-characterize Plaintiff's well pleaded state law claims. As set forth in the Complaint, Plaintiff dis-enrolled from VIVA when she found out that her prescription coverage was going to be limited. Plaintiff's claims do not involve receiving any medical services that were later denied payment by VIVA. Plaintiff's well pleaded complaint involves negligence and wanton conduct by VIVA and their agent, Ricky Crapp. VIVA has voluntarily assumed liability for Plaintiff's prescription drugs through October 1, 2007 at which time Plaintiff can re-enroll in her

Blue Cross/Blue Shield with Express Scripts (see letter from Latrina Hicks of VIVA dated April 13, 2007 Exhibit D) Defendants made this gesture after suit was filed. Whether or not this was an admission of wrongdoing on their part is for a Court to decide. We do know that there is no coverage issue either before or after Plaintiff dis-enrolled. Plaintiff has no medical coverage issue embedded in her complaint. No federal question issue exists.

IV. Express Preemption

Defendants continue to make arguments that the federal government has expressly preempted MA plans from state law claims. This is far from the truth. The CMS has stated as plainly as possible “ As noted in the proposed rule, we do not believe that either the principals of federalism or the statute justify such a broad preemption interpretation. We do not believe for example, we could preempt all state environmental or Civil Rights laws nor do we believe that it was Congress’s intend to do so. The preemption in §1860 D-12(g) implemented in 42 CFR 423.440(a) is a preemption that operated only when CMS actually created standards in the area regulated. Plaintiff has already demonstrated through direct evidence from CMS that they have chosen not to regulate the areas of fraudulent marketing and as Part C and Part D utilize the same preemption language it is clear that CMS has no intention of regulating MA programs with regards to their marketing practices.

CONCLUSION

Defendants continue to “Cherry Pick” through the statutes and regulations to try and support their specious argument. It is clear from the federal register that special interest groups working for Big Pharma and Insurance are attempting to circumvent the law and claim express preemption based on the MMA. Thankfully, the CMA has not been corrupted by the industries they regulate. Further, based on CMS’s action involving insurance salesmen like Ricky Crapp, the agent for VIVA, it is

clear that CMS will rely on state law and state agencies to govern the conduct of MA programs. If CMS sees no conflict between state and federal law with regards to Mrs Williams claims, then certainly this court should consider the opinions of those that regulate the Defendants. Defendants' arguments have no merit. This case is due to be remanded. Plaintiff renews her request for attorneys' fees and costs associated with this remand.

/s/ L. Cooper Rutland, Jr.
L. Cooper Rutland, Jr. (RUT010)
Attorney for Plaintiff

OF COUNSEL:

Rutland Law LLC
Post Office Box 551
Union Springs, Alabama 36089
334-738-4770
lcrj@ustconline.net

EXHIBIT A

STATE OF ALABAMA

COUNTY OF BULLOCK

AFFIDAVIT

Before me, the undersigned, a Notary Public in and for the State of Alabama, first appeared Susie Williams and being sworn did depose and say as follows:

My name is Susie Williams and I am the Plaintiff in Case Number 2:07-CV-321-WKW, Susie Williams vs Viva Health, Inc., et al., in the United States District in the Middle District of Alabama, Northern Division. On August 14, 2006, I filled out a medicare enrollment application with the assistance of Ricky Crapp who was an employee and/or agent of Defendant, Viva Health. On one page of the application, the question was asked if I would have other prescription drug coverage in addition to the Viva Medicare Plus program for which I was enrolling. As indicated on the attached Exhibit A, I marked "yes" and identified that coverage as my PEEHIP program, ID and Group Number 14000. It was my understanding that enrolling in Viva Medicare Plus would be in addition to coverages I already had under PEEHIP. This was the explanation provided to me by Ricky Crapp. Thereafter, I learned from my pharmacist that the total of my prescription drug coverage including PEEHIP would be \$3,000.00. I was aware of Viva Medicare Plus' limitation on prescription drugs. This is why I indicated I would have additional coverage under PEEHIP and at the time was not concerned. Thereafter, it was explained to me by my pharmacist that my prescription drugs had been severely limited by Viva's negligent conduct. In an attempt to correct this problem, I dis-enrolled from Viva but was unable to re-enroll in my plan administered by Blue Cross and Blue Shield. After several attempts by my pharmacist to explain the problem to Viva, it was determined that no corrective action would be taken by Viva and I sought the advice of an attorney.

Further affiant saith not.

Susie J. Williams
Susie Williams

Sworn to and subscribed to before me this the 29th day of May 2007.

Margaret S. Herring
Notary Public
Commission Expires 7-15-2010

EXHIBIT B



Medicare Enrollment Application

Office Use Only:

Name of staff member (if assisted in enrollment): Rickie CRAPP
 Plan ID #: _____ Effective Date of Coverage: 10-1-06
 ICEP/IEP: _____ OEP: _____ AEP: _____ SEP (type): _____

To Enroll in VIVA MEDICARE Plus, Please Provide the Following Information:
Please check which plan you want to enroll in:

☐ VIVA MEDICARE Plus Rx \$ 0 per month ☐ VIVA MEDICARE Plus Select \$ 0 per month

| | | | |
|--|--|---|--|
| LAST Name: <u>Williams</u> | FIRST Name: <u>Susie</u> | Middle Initial | <input type="checkbox"/> Mr. <input checked="" type="checkbox"/> Mrs. <input type="checkbox"/> Ms. |
| Birth Date: (<u>05</u> / <u>23</u> / <u>1928</u>) (MM/DD/YYYY) | Sex: <input type="checkbox"/> M <input checked="" type="checkbox"/> F | Social Security Number: <u>419-50-5603</u> | Home Phone Number: (<u>334</u>) <u>485-3304</u> |

Permanent Residence Street Address: 14333 COUNTY RD. 45 County: Bullock

City: Union Springs State: AL ZIP Code: 36089

Mailing Address (only if different from your Permanent Residence Address):

Street Address: _____
 City: _____ State: _____ ZIP Code: _____

Emergency contact: _____

Phone Number: _____ Relationship to You: _____

E-mail Address: (Optional) _____

Please Provide Your Medicare Insurance Information

Please take out your Medicare Card to complete this section.

- Please fill in these blanks so they match your red, white and blue Medicare card
- OR -
- Attach a copy of your Medicare card or your letter from the Social Security Administration or Railroad Retirement Board.

You must have Medicare Part A and Part B to join a Medicare Advantage plan.

| MEDICARE HEALTH INSURANCE | |
|--|---------------------------------|
| SAMPLE ONLY | |
| Name: <u>SUSIE J. WILLIAMS</u> | |
| Medicare Claim Number <u>419 - 50 - 5603A</u> | Sex <u>F</u> |
| Is Entitled To HOSPITAL (Part A) | Effective Date <u>5-1-93</u> |
| MEDICAL (Part B) | <u>5-1-93</u> |

Please read and answer these important questions:

1. Do you have End Stage Renal Disease (ESRD)? ☐ Yes ☒ No

If you answered "yes" to this question and you do not need regular dialysis any more, or have had a successful kidney transplant, **please attach a note or records** from your doctor showing you do not need dialysis or have had a successful kidney transplant.

2. Some individuals may have other health care coverage that pays doctor or hospital bills, including other private insurance, TRICARE, Federal employee health benefits coverage, or VA benefits.

Will you have other health care coverage in addition to VIVA MEDICARE *Plus*? ☒ Yes ☐ No

If "yes", please list your other coverage and your identification (ID) number(s) for this coverage:

Name of other coverage: PEEHIP ID # for this coverage: 14000 Group # for this coverage: 14000

3. Some individuals may have other drug coverage, including other private insurance, TRICARE, Federal employee health benefits coverage, VA benefits, or State pharmaceutical assistance programs.

Will you have other prescription drug coverage in addition to VIVA MEDICARE *Plus*? ☒ Yes ☐ No

If "yes", please list your other coverage and your identification (ID) number(s) for this coverage:

Name of other coverage: PEEHIP ID # for this coverage: 14000 Group # for this coverage: 14000

4. Are you a resident in a long-term care facility, such as a nursing home? ☐ Yes ☒ No

If "yes" please provide the following information:

Name of Institution: _____ Phone Number of Institution: _____

Address of Institution: _____

5. Are you enrolled in your State Medicaid program? ☐ Yes ☐ No

☐ QMB ☐ QMB+ ☐ SLMB ☐ QI-1

If yes, please provide your Medicaid number: ✓

6. Do you or your spouse work? ☐ Yes ☒ No

Please choose the name of a Personal Care Physician (PCP) from the VIVA MEDICARE *Plus* Directory:

PCP Name: Roger Glymph, MD

PCP Number: C73387

Hospital Name: BAPTIST HEALTH SYSTEM

Are you an existing patient? ☐ Yes ☐ No

**Please Read This Important Information**

If you currently have health coverage from an employer or union, joining VIVA MEDICARE *Plus* could affect your employer or union health benefits. If you have health coverage from an employer or union, joining VIVA MEDICARE *Plus* may change how your current coverage works. Read the communications your employer or union sends you. If you have questions, visit their website, or contact the office listed in their communications. If there is no information on whom to contact, your benefits administrator or the office that answers questions about your coverage can help.

Please Read and Sign Below:**By completing this enrollment application, I agree to the following:**

VIVA MEDICARE *Plus* is a Medicare Advantage plan and I will need to keep my Parts A and B. I can only be in one Medicare Advantage plan at a time. It is my responsibility to inform you of any health or prescription drug coverage that I have or may get in the future. Enrollment in this plan is generally for the entire year. I may leave this plan only at certain times of the year, or under certain special circumstances, by sending a request to VIVA MEDICARE *Plus* or by calling 1-800-Medicare. TTY users should call 1-877-486-2048.

VIVA MEDICARE *Plus* serves a specific service area. If I move out of the area that VIVA MEDICARE *Plus* serves, I need to notify the plan so I can disenroll and find a new plan in my new area. Once I am a member of VIVA MEDICARE *Plus*, I have the right to appeal plan decisions about payment or services if I disagree. I will read the Evidence of Coverage document from VIVA MEDICARE *Plus* when I receive it to know which rules I must follow in order to receive coverage with this Medicare Advantage plan.

I understand that beginning on the date VIVA MEDICARE *Plus* coverage begins, I must get all of my health care from VIVA MEDICARE *Plus*, with the exception of emergency or urgently needed services or out-of-area dialysis services. Services authorized by VIVA MEDICARE *Plus* and other services contained in my VIVA MEDICARE *Plus* Evidence of Coverage document (also known as a member contract or subscriber agreement) will be covered. Without authorization, **NEITHER MEDICARE NOR VIVA MEDICARE *Plus* WILL PAY FOR THE SERVICES.**

Release of Information: By joining this Medicare health plan, I acknowledge that the Medicare health plan will release my information to Medicare and other plans as is necessary for treatment, payment and health care operations. The information on this enrollment form is correct to the best of my knowledge. I understand that if I intentionally provide false information on this form, I will be disenrolled from the plan.

I understand that my signature (or the signature of the person authorized to act on behalf of the individual under the laws of the State where the individual resides) on this application means that I have read and understand the contents of this application. If signed by an authorized individual (as described above), this signature certifies that: 1) this person is authorized under State law to complete this enrollment and 2) documentation of this authority is available upon request by VIVA MEDICARE *Plus* or by Medicare.

| | |
|---|--|
| Your Signature: <i>Lusie J. Williams</i> | Today's Date: <i>8-14-06</i> |
| If you are the authorized representative, you must provide the following information: | |
| Name: <i>C 13334</i> | |
| Address: _____ | |
| Phone Number: (____) _____ | Relationship to Enrollee _____ |
| Witness Signature (required if applicant signs with an X): _____ Date: _____ | |

EXHIBIT C



BOB RILEY
GOVERNOR

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 1700
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351
TELEPHONE: (334) 269-3550
FACSIMILE: (334) 241-4192
INTERNET: www.aldoi.gov

WALTER A. BELL
COMMISSIONER
ASSISTANT COMMISSIONER
RAGAN INGRAM
DEPUTY COMMISSIONER
D. DAVID PARSONS
CHIEF EXAMINER
RICHARD L. FORD
STATE FIRE MARSHAL
RICHARD MONTGOMERY
GENERAL COUNSEL
REYN NORMAN
RECEIVER
DENISE B. AZAR
LICENSING MANAGER
JIMMY W. GUNN

BULLETIN

TO: All Insurers Licensed in Alabama
FROM: Walter A. Bell, Commissioner of Insurance *WAB*
DATE: February 16, 2006
RE: Medicare Part D Marketing

Since October 1, 2005, marketing activity for the new Medicare prescription drug benefit, Medicare Part D, has been permissible. According to the Centers for Medicare & Medicaid Services (CMS), only state-licensed insurance producers may engage in marketing activity. The Medicare Modernization Act does not preempt producer licensing laws. Thus, state law and regulatory provisions regarding producer activity apply to the marketing of Medicare Part D.

CMS has received complaints about alleged misconduct by licensed producers with regard to Medicare Part D marketing. CMS will refer complaints it receives about producers licensed in this state to the Alabama Department of Insurance. This bulletin reminds licensed producers that they are subject to all laws and regulations of this state, including those relating to the duty of good faith and fair dealing, the suitability of sale, and the prohibitions against misrepresentation, churning, and high pressure sales tactics.

We view with a high degree of skepticism the use of a lead relating to Part D marketing activity to cross-sell other insurance products of any type. The new Part D benefit is fundamentally confusing for the Medicare beneficiary. It would be unwise for the producer to take advantage of the Part D lead to sell other insurance products to a Medicare beneficiary for which he or she may not be suited.

Allegations of misconduct related to Part D marketing will be thoroughly investigated by this office. Any proven misconduct will be prosecuted under the laws of this state relating to producer licensing.

WAB/EB/bc

EXHIBIT D



April 13, 2007

Ms. Susie Williams
c/o L. Cooper Rutland, Jr.
Rutland Law Firm, L.L.C.
208 North Prairie Street
Post Office Box 551
Union Springs, Alabama 36089

Re: Your VIVA Health coverage

Dear Ms. Williams:

VIVA Health has recently learned that the benefits of your VIVA Medicare Plus Select ("VIVA Medicare") and your VIVA Health plan for PEEHIP retirees might not have been what you anticipated. There may have been some confusion concerning the plan's coverage maximum for prescription drugs and coverage for syringes. There also may be some confusion about your disenrolling. At VIVA Health, we take pride in our customer service and we want to do whatever might be reasonable to assist you.

First, effective October 1, 2006, you completed two separate enrollment applications for membership in two separate VIVA Health plans. The primary plan, VIVA Medicare, is a Medicare Advantage plan offered by VIVA Health under a contract with the Centers for Medicare & Medicaid Services ("CMS"). The secondary plan is the plan VIVA Health offers to PEEHIP retirees, which enhances the benefits of VIVA Medicare by eliminating member out-of-pocket costs on covered medical services, adding coverage for dental services and eyewear, and adding a prescription drug benefit.

According to our records, you disenrolled from VIVA Medicare effective November 30, 2006. VIVA Health assumes that you returned to original Medicare for your Medicare benefits. Disenrollment from the secondary plan, VIVA Health for PEEHIP retirees, is controlled through PEEHIP. PEEHIP's rules govern when you can dis-enroll. In addition, Blue Cross Blue Shield of Alabama would have to agree to allow you to enroll in its plan, or you would not have PEEHIP coverage. VIVA Health cannot enroll you into Blue Cross PEEHIP coverage. To date, we have not received instructions from PEEHIP to dis-enroll you, but will do so as soon as such instructions are received. Generally, changes to PEEHIP coverage are made at open enrollment, which begins in the late summer for an October 1, 2007 effective date.

As to the prescription drug maximum, the prescription drug benefit offered under the VIVA Health plan for PEEHIP retirees does have a \$3,000 maximum per calendar year. This maximum is stated in VIVA Health's marketing materials (including the original letter you received from VIVA Health making you aware of this plan). This limit is also included in the

1222 14th Avenue South, Birmingham, Alabama 35205
Phone (205) 918-2067 • 1-800-633-1542
For TTY Services: Call Alabama Relay at (800) 548-2546
Our office hours are Monday through Friday from 8:00 am to 5:00 pm

rider to the Evidence of Coverage you received at enrollment and again in early November as part of our annual mailing describing the additional benefits of enrolling in the VIVA Health plan for PEEHIP retirees. Our call documentation does not reflect that you have called concerning this prescription drug maximum.

Our records do not indicate that you have been impacted by this prescription drug maximum. You did not reach the maximum in 2006. The maximum reset on January 1, 2007, providing an additional \$3,000 in benefit. You have not yet exhausted this amount in 2007.

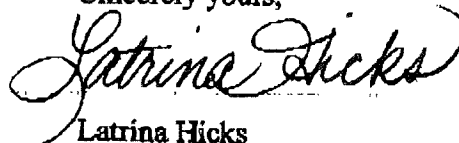
Based on your misunderstanding of the coverage maximum and the importance of your medications to managing your medical conditions, VIVA Health will waive for you the \$3,000 maximum for prescription drugs for your medical conditions until October 1, 2007. On October 1, 2007, you may change your coverage with PEEHIP back to the Blue Cross plan for retirees, if that plan better suits your needs, or you may continue with VIVA Health PEEHIP coverage for retirees with the annual \$3,000 prescription drug maximum (unless this benefit changes for the next plan year), like other VIVA Health PEEHIP retiree participants.

As with the prescription drug coverage, our records do not indicate that you have had any claims for syringes that have not been paid. Unfortunately, Medicare does not allow Medicare Advantage plans that do not include Medicare Part D, like VIVA Medicare, to cover syringes. However, syringes are 100% covered on your VIVA Health PEEHIP plan from participating diabetic suppliers. To assist you, VIVA Health will also cover syringes under the VIVA Health plan for PEEHIP retirees prescription benefit so that you may get them at a participating pharmacy at no cost to you until October 1, 2007. If you have paid out of pocket for syringes before you brought this issue to our attention, please send us the receipts or other documentation letting us know what you have spent and VIVA Health will reimburse you.

VIVA Health's plans have grievance and complaint procedures, which can be initiated by calling us. Our records do not indicate that you submitted any complaint verbally or in writing as to any of the above issues. VIVA Health is always glad to attempt to resolve any issue you might have over the telephone. If you are not satisfied, though, with any aspect of your VIVA Health coverage, please submit something in writing, which should help resolve any issues.

VIVA Health regrets if our plans did not meet your expectations. Again, we will waive the \$3,000 prescription drug coverage maximum and allow you to secure syringes through a participating pharmacy at no cost until October 1, 2007, your next opportunity to change your PEEHIP plan. We trust you will find these accommodations reasonable. Please contact me at (205) 558-7575 if you have any questions related to this letter.

Sincerely yours,



Latrina Hicks
Manager of Medicare Member Services
VIVA Health Inc.